

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA

Allen Lee Davis, ) C/A No. 4:09-2989-TLW-TER  
                    )  
                    Plaintiff, )  
                    )  
vs.                 )  
                    )  
                    Capt. Sharon Middleton; )  
                    Sgt. Holtzclaw, and )  
                    Officer Wells, Cpl, )  
                    )  
                    Defendants. )  
                    )  
                    )  
                    ) \_\_\_\_\_  
                    )  
                    )  
                    ) Order

This matter is before the Court because of Plaintiff's failure to comply with this Court's Order of November 17, 2009. (Doc. # 5).

A review of the record indicates that the Court ordered Plaintiff to submit items (service documents and the filing fee or completed and signed Form AO 240) needed to render this case into proper form within twenty days and specifically informed Plaintiff that if he failed to do so, this case would be dismissed *without prejudice*. The Proper Form Order was mailed to Plaintiff's address as provided. The mail was returned as undeliverable. A search of the South Carolina Department of Corrections internet inmate locator disclosed that Plaintiff was transferred to SCDC custody and was housed at Kirkland R & E Center. Accordingly, the initial Order was re-mailed to Plaintiff at the Kirkland address. The Order was again returned undelivered. Shortly thereafter the Court received a change of address notice from Plaintiff, and the Order was re-mailed to him at the address provided. Plaintiff has neglected to comply with the Order within the time permitted and as extended.

Plaintiff's lack of response to the Order indicates an intent to not continue prosecuting this case, and subjects this case to dismissal. See Fed. R. Civ. P. 41(b)(district courts may dismiss an action if a plaintiff fails to comply with "any order of the court."); see also Ballard v. Carlson, 882 F.2d 93, 95 (4th Cir.

1989)(dismissal with prejudice appropriate where warning given); Chandler Leasing Corp. v. Lopez, 669 F.2d 919, 920 (4<sup>th</sup> Cir. 1982)(court may dismiss sua sponte).

Accordingly, this case is dismissed without prejudice. The Clerk of Court shall close the file.<sup>1</sup>

**IT IS SO ORDERED.**

s/Terry L. Wooten  
United States District Judge

April 15, 2010  
Florence, South Carolina

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<sup>1</sup> Under General Order, Misc. No. 3:07-5014-JFA, this dismissal without prejudice does not count as a “strike” for purposes of the “three strikes” provision of 28 U.S.C. § 1915(g). If Plaintiff wishes to bring this action in the future, he should obtain new forms for doing so from the Clerk’s Office in Columbia (901 Richland Street, Columbia, South Carolina 29201).